

**Air Pollution Control Advisory Council Meeting
May 10, 2001 2:07 p.m. – 4:25 p.m.
Conference Room 111 of the Metcalf Building
Department of Environmental Quality (DEQ)**

Attendees

Council Members

Diane Lorenzen, Chemical Engineering
Dean Johnson, Fuel Industry
Mike Machler, Meteorologist

Other Attendees

Valery O'Connell, Private Citizen
Bonnie Rouse, DEQ
Bob Martin, DEQ
Gail Abercrombie, MT Petroleum Assoc.

Other Attendees (Con't.)

Deb Wolfe, DEQ
Charles Homer, DEQ
Jan Brown, DEQ
Bob Habeck, DEQ
Elton Erp, DEQ
Steve Wright, Columbia Falls Aluminum Co.
Cathy Laughner, Browning, Kaleczyc, Berry &
Hoven, PC.
Mark Peterson, DEQ
Dave Klemp, DEQ
Vickie Walsh, DEQ
Howard Haines, DEQ

1. Call to Order – Establish a Quorum. Chairman **Mike Machler** called the Air Pollution Control Advisory Council meeting (APCAC) to order at 2:07 p.m. in Conference Room 111 of the Metcalf Building in Helena, Montana, a quorum was not present. Absent were Cliff Cox, Dennis Alexander, Kathy Harris, Dave Noell, Mitchell Leu, Linda J. Dworak, and Brad Black.

- a) **Review of 11/09/00 and 3/08/01 minutes:** The members present recognized that copies of the minutes had been received and expressed their acceptance of both sets of minutes.
 - b) **Unfinished Council Business:** Ms. Lorenzen asked if there would be a follow-up of Ms. Dworak's environmental concern on pesticides and herbicides discussed at the last meeting. Mr. Habeck said he could not recall any work requests for further presentations from DEQ (the department). Ms. Dworak was going to pursue some local possibilities and possibly more contacts with the Departments of Agriculture and Fish, Wildlife and Parks.
 - c) **New Council Business:** None
 - d) **Member Reports to Council:** None
- 2. Housekeeping Remarks:** Mr. Habeck said Cliff Cox has resigned from APCAC due to work pressures. APCAC as a result is in need of a member to represent agriculture. Mr. Habeck said he would appreciate any name suggestions the other committee members may have. Mr. Habeck defined agriculture as anyone who owns/rents land, raises animals or grows crops and has an agriculture perspective in broad terms. He hoped to have a list of candidates by the next meeting for the consideration of APCAC. APCAC's recommended list would be submitted to Governor Martz.

3. Rulemaking Action Items

(a) **Small Municipal Waste Combustor Rulemaking: Bob Martin, Air and Waste Management Bureau, Permitting and Compliance (PCD), DEQ.**

Mr. Martin passed out copies of the Executive Summary for Action on Rule Amendments (Exhibit 1 of the minutes). He said the department is requesting the Board of Environmental Review (Board) initiate rulemaking to amend ARM 17.8.302(1)(b) and 17.8.340(6) to incorporate by reference the New Source Performance Standards (NSPS) for small municipal waste combustion units. He said there is only one affected facility in Montana and that is the Park County incinerator in Livingston. To come under this rulemaking an incinerator would have to be a municipal waste combustion unit that has a designed capacity between 35 and 250 tons per day of municipal solid waste. The Livingston incinerator in Park County has a capacity of 72 so would fall in that category. On December 6, 2000, the Environmental Protection Agency (EPA) issued regulations reestablishing air pollutant emission guidelines for existing small, municipal waste units. The EPA guidelines do not directly regulate the municipal waste combustion units but require the states to develop plans that limit their emissions. Mr. Martin said he has drafted the plan (Exhibit 2 of the minutes) and it will contain the same emission limits as in the Code of Federal Regulations (CFR). The plan needs to be submitted to EPA by December. The administrative rule text will be revised to incorporate by reference the existing small municipal combustion units rule in the CFR and the Montana small municipal waste combustion unit plan. Mr. Martin said they had talked to the Park County Commissioners and the cost of the needed scrubbing devices is more than they can afford so they are looking at alternatives such as taking their municipal solid waste to the Gallatin County landfill or the Logan landfill. This request for rulemaking will be before the Board at their May 18 meeting. A copy is Exhibit 2A.

Ms. Lorenzen asked if this was optional. **Mr. Martin** said the Park County Board has to comply with this ruling even without state action. It is a federal rule so EPA would enforce it even if the department chose not to incorporate it into the rule. He said it is routine for the state to incorporate these standards as they come down.

Mr. Machler asked why the EPA 's original guidelines were vacated. **Mr. Martin** replied that the Park County attorney had added this line of text to the executive summary. Mr. Martin said he didn't have the answer but would research it and find out. Mr. Martin added that compliance with the emission standard is three years after the plan is approved or December 6, 2005. The plan has to be submitted by this coming December.

Ms. Lorenzen asked if the affected facility could be grandfathered. **Mr. Homer** said grandfathering would not apply in this case.

Mr. Martin in response to a question from Mr. Machler said the Park County incinerator would be shutting down as at this time the emissions are fairly uncontrollable and the cost to retrofit prohibitive. He said the county commissioners have been aware of this.

(b) **Major Source Open Burning Fee Rulemaking. Bob Martin.**

The executive summary and the proposed rule are Exhibits 3 and 4 of the minutes. This is the department's request to initiate rulemaking to amend an air quality open burning fee rule. He said this is an annual rulemaking. Each year in consultation with the Montana Air Shed Group the

department develops a budget reflecting the costs the department will incur that year in operating its smoke management program for major open burners. Fees assessed to individual burners are based upon the budget and the burners actual or estimated actual emissions during the previous calendar year. He said last year the budget was \$41,000 and this year the budget is approximately \$44,000. Mr. Martin said this increase is mainly due to an increase for department staff to travel to program meetings. Many of the meetings that were held in Missoula will now be held in Boise. This will go before the Board on May 18 with a request to initiate rulemaking.

Bob Habeck added that one more person's travel fees have been added to attend the meetings. He said the activity of the department hasn't changed but this reflects more the true cost of that activity.

(c) Air Pollution Control Equipment Maintenance for Aluminum Smelters – Authority to Initiate Rulemaking. Charles Homer, Air and Waste Management Bureau, PCD, DEQ.

The executive summary and the proposed rule are Exhibits 5 and 6 of the minutes. Mr. Homer said the Columbia Falls Aluminum Company (CFAC) received a variance last fall from the Board to do some necessary maintenance duct work associated with the air pollution control equipment. The variance was requested so the facility could continue to operate during the time the maintenance was being done. Under the terms of the variance, CFAC can not violate any ambient standards but would be allowed to violate other rules. The Board directed the department to develop a rule, which would allow the same maintenance to be performed in the future without having to go through the variance process. The proposed rule would allow CFAC to develop a maintenance plan that would be submitted to and approved by the department instead of the Board. This will be considered at this Board meeting. Also being considered is whether this rule should be incorporated into the state implementation plan (SIP).

In response to a question on EPA approval, Mr. Homer said if the state chooses to submit it as part of the SIP, EPA would need to approve it. The variance process is not part of the SIP and EPA does not recognize variances granted by the Board.

Ms. Lorenzen observed that since CFAC is presently not operating they could do the necessary upkeep now. She felt they would need to show an explanation of why they couldn't do it now if they have to have special treatment later. **Mr. Homer** said there are representatives of CFAC at the meeting and they could be asked this question.

Steve Wright, CFAC, said they had received a copy of the proposed rule last week and would like to meet with the department and go through some of the points before it goes to the Board. Bonneville Power Administration (BPA) has requested all aluminum plants to stay offline for two additional years and CFAC is negotiating with EPA. Mr. Wright said CFAC's present plan is to restart some portion of the plant in the first quarter of 2002. He said they are going through their scrubbing system and making extensive repairs. Mr. Wright said it would probably be a matter of years before CFAC would be looking at this rule, but he said they would like to go forward with rule-making as sometime in the future it will be needed for short-term outings.

4. Discussion Items

(a) Gasoline Vapor Emissions. Valery O'Connell, Private Citizen from Belgrade.

Ms. O'Connell handed out copies of her preliminary research on vapor recovery. This is Exhibit 7 of the minutes. She said she started research on vapor recovery ten months ago. Ms. O'Connell said

she is personally involved as there are two gas stations in her residential neighborhood. She said her initial attempts to receive assistance from DEQ were basically met by a shut door. Ms. O'Connell questioned DEQ's previously expressed difficulties with predicting what EPA would do, by saying her experiences with EPA have been very good and that EPA should be an ally of the department and not an enemy. She said what she wants to do is have a vapor recovery system available for neighborhood gas stations in Montana, especially those with a high volume of sales. Ms. O'Connell said she is before the council today to encourage the department to start some rule making process for vapor recovery for neighborhood gas stations and any gas station that exceeds the 25 ton vapor emission limit as a single source.

Ms. O'Connell said Senator Hargrove supports any kind of legislation including rule making that would accomplish the goal of vapor recovery. She said they had a rider on another bill with language that would have paid for vapor recovery, but it was removed due to political pressure from the Petroleum Marketers' Association. Ms. O'Connell said she has the support of APCAC member Dennis Alexander on this and he had left his vote in favor, as he was unable to be present today. She said the department does not support vapor recovery, but they haven't looked at the health risk of the vapor emissions. She said the packet sent to council members contains paperwork done by the regional toxicology office in Denver indicating the health risks as shown by two vapor modeling emission tests. Ms. O'Connell said their home is 17 times over the limit of what is a known health exposure limit and they live a football field length away from the source. She said the main reason that caused her to address APCAC today was that she had hardly any response from the department; the problem is not going away and her children are at least three times sicker living here than previously; the neighborhood was there before the gas stations were built; and, of course, property values have gone down. The requirements for gas stations are lax and there is no dispersing of the vapors like occurs in other states. She said she has a video if the council would care to see it of the neighborhood.

Ms. Lorenzen asked about the proposed legislation. **Ms. O'Connell** said they would like to change some of the language in Chapter 7 on Environmental Quality Rules for underground storage tanks which now covers cleanup of petroleum spills – they would like to see some broader language in that statute.

In response to a question from Ms. Lorenzen, Ms. O'Connell said what is needed since they know it poses a health risk is to work out the math and other semantics. EPA supposedly has a budget for an analysis of the emissions – which would prove what the neighborhood already knows that they are getting a lot more emissions than are healthy for them. The department has a 25-ton emission limit before they will take action – where it is a health risk issue now. She felt pressure needed to be applied on the station owners by someone with clout – not just a housewife – to get something done. She said the department has not been much help. She said it is a small issue compared to the asbestos situation in Libby, but should be dealt with as with the exposure limits in their neighborhood the possibility of a person dying in the next five years is very high. Ms. O'Connell said she has visited with Bonnie Rouse, state ombudsman for small businesses.

Mr. Machler asked if EPA has proposed anything with respect to the vapor control issue. **Ms. O'Connell** replied that they would like, to but EPA hasn't come up with the standards to accept. EPA is aware it is a health risk and has been for decades. Ms. O'Connell said a high exposure level can do health damage in a short period of time and there are neighborhoods surrounding these gas station locations – which was bad planning on the part of zoning. She said five to ten percent of the

gas stations in Montana exceed the 25-ton emission limit and they are not being regulated as of now. She said she would really like to see some action.

Mr. Johnson asked if the department has looked into this. **Dave Klemp** responded that historically gas stations were far below the emission cut off so that an inventory was never warranted. He said they would now check on gas station emissions.

Ms. O'Connell said she had been informed by the department that if a gas station sells 7,300 gallons or more a day it would be over the 25 ton emission limit. Gas stations in the "boondocks" are not a problem, but the ones that are located in neighborhoods with the high exposure limits that come from refueling as the emissions go out into the atmosphere instead of being collected as they are in most states. When gas gets dumped into the ground by refueling tanker trucks, the same volume of gas put into the tank is displaced into the atmosphere in a short period of time. There are 150 toxins in that emission exposure. When you personally fill your gas tank that's one part per million, but this is much more and the stations refill daily. She said they would like to move, but why should all the elderly and children who live in the nearby complex and play in the playground be exposed to these limits. Why wait 15 to 20 years to see what happens – an elderly lady has moved out of the complex as she has the anemia which is a precursor to leukemia, and her doctors don't know why. A number of the older ladies have dizziness, nausea or drowsiness. She said the petroleum industry could afford a simple fix, but there is political pressure on the petroleum industry not to do anything. Ms. O'Connell said a vapor recovery system can be expensive as for stage 1 and 2 it would be over \$40,000 to retrofit. For a new station the costs would be half. There are industries in Montana that are starting to put vapor recovery systems in including the Costco stores and some Safeway stores – they have come from out-of-state and are used to that kind of standard. She said just because we have a substandard system does not address the issue of whether we need a vapor recovery system.

Ms. O'Connell said Gallatin County is ranked in the worst 20 percent of counties nationally for private air pollutions. She asked whether this was the kind of press Montana wants. Ms. O'Connell said traditionally gas stations are a good press piece and that is why other states have vapor recovery systems – not just for ozone containment but because of health risks. She felt this would eventually go to the EPA.

Bob Habeck: The recommendation put forth was to pursue a vapor recovery rule. The issue is what mechanism to use to address this.

Mr. Machler said it should be done on the federal level. He asked if the department had any plans to address this.

Bonnie Rouse, Ombudsman for the Small Business Program, Pollution Prevention Bureau (PPB), Planning, Protection, and Assistance Division (PPAD), DEQ. Ms. Rouse said she was approached in mid-March by the department to visit the gas stations in question and see if they were open to a voluntary type of beyond compliance idea. Mark Peterson of Permitting and Compliance Division and Ms. Rouse had visited the station owners and came up with an energy efficient exclusion production type of program. Voluntary vapor recovery was part of the pollution prevention of the program. One of the owners was very receptive to the idea – he felt it was a great idea and was going to look into it further. Following that he informed Ms. Rouse he wasn't willing to do the vapor recovery at this time on a voluntary basis. The gas station owner said if it is a problem in Belgrade it is a problem across the state and it is a problem across Region VIII. The gas station owners didn't

mind doing it but they wanted all the competition to do it also and brought up the cost of installing the systems.

Mr. Machler asked what the cost would be? **Ms. Rouse** said it would depend on how new the tanks were – if they can look at them easily or if they have to retrofit the tanks. Another item, she said, was that doing it in Belgrade would be setting a precedent and the retrofit would need to be done in other areas also and that would be a big expense. She said also if they go ahead and put the equipment in are they going to be accepting guilt. **Ms. Rouse** said she is still working with the gas station owners on energy efficiency and pollution prevention and is trying to set up a pilot study. She said she would try to get them to work on vapor recovery but doesn't feel too positive on that note as yet.

Dave Klemp, Air and Waste Management Bureau, PCD, DEQ. Mr. Klemp said when they have the time and people available the department is going to do a survey of the gas stations in the state and try to find out who needs permits. He said they would handle it just like any other industry category that potentially needs permits. He said EPA has promulgated a bulk gasoline distribution maximum achievable control technology (MACT) that deals with this type of a situation and is in existence now. He said the problem is the level for that MACT is set pretty high and a lot of facilities in Montana that are bigger than the gas stations in Belgrade fall underneath the trigger point for that MACT. So EPA is regulating, but much larger facilities than those we are addressing now.

Mr. Klemp said he wanted to make clear what the permit system allows the department to do. He said they can write permits for facilities over 25 tons a year, but this may not address **Ms. O'Connell's** concerns. He said if a station has barely over 25 tons of emission the cost of power control equipment would be prohibitive and that is a factor in the permitting program. **Mr. Klemp** said this is what the department will be looking at as well as compliance with the ozone standard. Montana doesn't have the ozone type of problem today – in the future it will be dealt with in the normal state implementation plan route.

Ms. Lorenzen asked if the odor rule were still on the books. **Mr. Homer** said it is up for being removed from the books at the May 18th meeting. The odor rule has been closed to comments. **Ms. Lorenzen** asked whether the neighborhood could get together and say there was an odor that was causing a public nuisance. She asked **Ms. O'Connell** if they had checked on using this rule. **Ms. O'Connell** said no - she added that vapor recovery cost could be as little as \$2,000 – to do this the way Washington State has. **Mr. Homer** said the comment period for the odor rule has passed and the Board will be making its final decision and generally they don't take comments at that time. He said if it was determined that a violation had occurred and the rule was still on the books the department could take action.

Mr. Klemp said it is very difficult to use risk in the permit process. The one area we use risk assessment in the permitting process is with incinerators to be sure they pose no more than a negative risk to health and the environment. He said this is an area where they are "butting heads" with EPA – if gasoline vapor emissions from gas stations are a problem, the department wants this recognized as not only a Belgrade problem but a problem that exists across the region and the country. The department asserts this is what the MACT program is for. All sources of emissions should be treated the same.

Mr. Habeck, in response to a question from Mr. Johnson, said EPA would like to handle this on a case-by-case basis. **Ms. O'Connell** said EPA wants a program adopted on a state-by-state basis rather than federal.

Ms. Lorenzen said she was still confused – since the compounds in question have a low-odor threshold wouldn't the odor rule be the way to get at the problem. **Mr. Homer** said the odor rule has been on the books for a period of time but has been difficult to enforce. A determination on an odor nuisance is very much dependent on individual responses – some odors are offensive to some people and not to others. He said many odors are not associated with health effects in a linear way – as the odor increases some find it more offensive, but that doesn't mean there is an additional health impact, and many emissions that impact health have no odor. Mr. Homer said the department determined this rule was unnecessary and so recommended its repeal. He said there are still public nuisance statutes so the ability for redress still exists on the books. These statutes would not be enforced by the department, but on the civil level.

Mr. Homer summarized the department's position. He said they have been working since last fall with Ms. O'Connell and have written letters. EPA did a risk analysis and found significant health risk in their estimation. Mr. Homer said since the department does not have a toxicologist on staff they could not determine the accuracy of the analysis. The department expressed concerns that if the health risk is as EPA said something should be done. EPA responded with let's deal with Belgrade and not with the situation as a whole. Mr. Homer said they had reviewed the Washington State vapor recovery rule and DEQ wasn't supporting that approach at this time. He said APCAC can take a position one way or the other on this matter and Ms. O'Connell will go before the Board and present her position and DEQ will assist her.

Mr. Machler expressed the feeling that more information is needed on the potential health risks. **Ms. O'Connell** said she had done all this research and it was sent in the mailing to APCAC members. **Mr. Machler** said he would like to look at the assumptions made and the emission factors and modeling they used and evaluate them as all Ms. O'Connell's comments about health risks are based on this study. Mr. Machler added that he isn't saying he doesn't believe the results of the study, but he would like to review it as modeling depends almost completely on the model input.

Mr. Johnson asked how long the survey would take to see if other localities have this same problem. He said he preferred a local rather than a statewide solution.

Mr. Klemp said it would depend on resources, which are stretched at the moment. He said this is high on the priority list and they anticipate getting something done this year. He said they haven't permitted any facilities like this at this time, so DEQ can't make a determination at this time as to what it will require. Mr. Klemp said they would try to get information as soon as possible.

Ms. Lorenzen moved that the vapor recovery topic be placed on the agenda of the next APCAC meeting. The other members present agreed. **Mr. Machler** said he would like to see an evaluation of the materials presented by Ms. O'Connell.

Mr. Habeck said the recommendation of the council is to postpone a recommendation of the issue until the next meeting. He said DEQ could solicit the services of the state toxicologist to check on information presented.

Ms. O'Connell asked to say a few more words. She said she would like to discuss what Washington State has done. She said look at page 5 of her information that talks about stage 1, vapor recovery. She said this is something that could be implemented right away. She said it is not really a question of health risk at this time as the toxicologists she talked to in California, Arizona, Texas and Washington all laughed to think anyone would question the health risks. She said she has done ten months of research. She said DEQ is not interested in tackling this problem on a personal or local level. She said the problem is not going away and it can't take all this time. She said the Gallatin County Health Department is backing this and they are taking some steps to help. She said it is basically how much gas is dumped in the tanks – and new stations are required to do at least stage 1. She said Conoco Inc is going to be spending \$11 million plus to upgrade their bulk terminal facilities in Montana in the next few years and they support the vapor recovery. She said it is a political issue. DEQ's working relationship with EPA is not good and she said she did not like that. She said their house shouldn't suffer for something so cheap to fix – a temporary fix of adding some couplers to force the vapors back into the gas truck would be about \$2,000. Ms. O'Connell expressed her belief that DEQ could bring political pressure on the gas station owners to accomplish some relief.

Mr. Johnson said DEQ would not have authority as no air quality regulations are being violated.

Ms. O'Connell said the gas station owners are aware of the odor problems, the public nuisance they create, and about the possibility of this cheap fix and that they have insurance that would cover. There needs to be some way of applying pressure to see it gets done.

Mr. Habeck said APCAC will not take action on a recommendation at this time and will hear an update on this matter at our next meeting.

(b) Particulate Matter Standards Update. Deb Wolfe, Resource Protection Planning Bureau, PPAD, DEQ.

After 1987, EPA was required by rule to review the particulate matter (PM) standards and did revise them and added the PM 2.5 standard in 1997. EPA was sued. The circuit court ruled that PM 2.5 was a double regulation of the PM 10 standard for the portion of a sample still regulated by the PM 10 standard. The court ruled that EPA didn't adequately research the health effect of particle size and remanded the standard back to EPA. EPA appealed the lower court's ruling to the Supreme Court. It went to the Supreme Court last fall and its opinion was issued on February 27, 2001. Two issues in the ruling regarded PM 10. The first issue was whether or not EPA could consider implementation costs when setting primary and secondary standards for PM 2.5. The court found the Clean Air Act does not permit the EPA to consider those costs when establishing the standards. However, the Court went on to say the cost consideration is the state's responsibility when implementing the statute. Congress intended the state to choose the means for implementing the standards that EPA promulgates.

The second issue: Is EPA acting outside of authority? Congress gives each agency authority under an enabling statute. If the enabling statute does not contain sufficient direction to an agency, the agency can be open to an attack arguing that it is acting outside its authority. Very few cases exist that the Supreme Court has determined that an agency acted outside its authority. This is a groundbreaking issue and could have affected a lot of agencies. The Supreme Court said it doesn't violate the constitution to have EPA set its standards to protect public health but the process it went through didn't violate the rulings the Supreme Court had earlier made regarding the same kind of issues. It was well within those other rulings and so the Supreme Court declined to say the EPA was acting

outside of its authority. The Supreme Court remanded the case back to the Circuit Court to consider the double regulation issue and the health effects of the particle size and other undecided issues.

Mr. Machler asked what standards are being regulated. **Mr. Habeck** said the 1987 PM 10 standard is still in effect. **Mr. Erp** said it is better to say the PM 2.5 standard is in effect but is not being used to determine compliance.

Mr. Machler asked if the PM 2.5 standard is on permitting application materials, is it necessary to estimate?

Mr. Erp said there is no state standard for PM 2.5.

Mr. Habeck said originally after three years of collecting PM 2.5 monitoring data, there was to be a five-year review of the standards and that would have been 2002. There is supposed to be a review scheduled to see if the proposed 65/15 micrograms is appropriate. He said he expects the Circuit Court will remand it back to EPA and direct the five-year review be done and to incorporate all the recent health studies. So we are still in a wait and see mode with PM 2.5 and PM 10 remains the standard.

(c) Small Business Assistance Program & HB 118. Louise Moore, PPB, PPAD, DEQ.

A copy of HB 118 is Exhibit 8 of the minutes. Ms. Moore said she was filling in for Bonnie Rouse. She said HB 118 is a housekeeping piece of legislation that was requested by DEQ to clean up two items. One was a date that had passed that had required the department to have certain types of applications completed by November of 1997. The work has been done, the date is passed and this would just clean up the language. The second item has to do with the Small Business Ombudsman. Initially the law mandated this position be located outside the department. This was to have a separation between that position which was to act as an ombudsman for the small businesses and the regulatory side of the program. It was housed in the department of Commerce. At the time of the agency reorganization and the Planning, Prevention and Assistance Division (PPAD) came to be it was determined that this position would fit well within the technical and financial assistance that the PPAD did and specifically within the Pollution and Prevention Bureau. This was a recommendation of APCAC. This was done late in November of 1996. This bill cleans up legislation to allow that to have happened. An amendment put into this statute makes clear what has been practiced, and that is the ombudsman cannot share information obtained during site visits, etc., with any of the regulatory programs the department supports that could result in an administrative or enforcement action against them, unless it is an imminent danger to health.

(d) Legislative Bill Review

HB 499. Louse Moore.

A copy of this bill is Exhibit 9 of the minutes. Ms. Moore said this piece of legislation was introduced by Tom Facey of Missoula to encourage glass recycling in Montana. The department did not take a position on this bill but did discuss and follow it and had some amendments added to make it work within other existing laws. Rep. Facey introduced the bill because the shipping of recycled glass out of state is more than the value received and so glass is ending up in landfills in Montana. The department has worked with companies like Ash Grove Cement to take it as fill replacement but there is still a lot of glass going into landfills. Local markets need to be developed because of the weight and volume of glass. A likely use for crushed glass is as a partial replacement for gravel in

road construction whether in concrete or roadbeds, or some other civil engineering application. Rep. Facey wanted to provide an incentive for businesses to go into the recycling market and he came up with the idea of credit against air permit fees for businesses that recycle glass. Rep. Facey was very specific in the legislation that an incentive of \$7 per ton be provided as a credit against the air permit fees up to a maximum of \$1,500 or the total air fee whichever is less. The department estimated the fiscal impact of this bill against the department's permit fees at \$40,000. It was difficult to figure out how many businesses will actually take advantage of this. The two that could be identified for sure were Holman and Ashgrove at \$1,500 each because they are already using crushed glass. There are a large number of gravel crushers in the state that would be able to come in and process the glass and mix it with gravel. How many will be willing to take on the nuisance of dealing with the collection of glass, yellow jackets, odors and the left over liquids that come with recycling is uncertain at this point. The Pollution Prevention Bureau will take action quickly, as the legislation was effective upon passage and approval, which was May 1. Ms. Moore said Bob Martin is working on getting rules developed. She said this would not be a big effort as the bill is specific as to who qualifies. It is a short-term incentive and sunsets on December 31, 2005.

HB 605. Deb Wolfe.

Ms. Wolfe said this legislation has to do with the stringency requirements that must be reviewed each time rulemaking is done to determine if the rule being passed is as stringent or more stringent as the equivalent federal rule. The state, unless it could make a demonstration of necessity, has been required to do this. Now the counties will be subject to the same stringency requirements as the state. This piece of legislation includes a provision that regulations already passed would also have to pass this stringency test if requested by a petitioner. Local agencies must also comply with specific procedure requirements similar to MAPA and an interested person must follow the state process of 30-day written notice – e.g. elements of proper notice and a demonstration that any proposed regulation is reasonably necessary to implement the goals and the purposes of the program. A hearing is required if ten persons potentially affected by the rule requests one. The local program must respond to all comments and inform all commenters on the final action. A copy of HB 605 is Exhibit 10 of the minutes.

HJR 21. Deb Wolfe.

This is a joint study to address issues regarding the need to balance the necessary management of forest fuels with the air quality concerns resulting from prescribed wildland and open burning and to provide solutions to the next legislature. The goal is to have a more flexible open burning policy to get rid of fuels that feed the wildfires. The sponsors want a risk/benefit analysis of when air quality may be compromised in order to reduce fuel buildup and when long-term social and economic benefits of prescribed burning exceed the short-term air quality impairment. There are two other items that don't have to do with air quality: whether any type of prescribed burning gets preferential treatment and if there are exemptions for agriculture and private property. The Legislative Council is the lead in this particular study and the study is to conclude on September 15, 2002. The department's role is limited. A copy of this legislation is Exhibit 11 of the minutes.

HJR 25. Deb Wolfe.

This legislation by Representative Carney requests the department to establish a task force to develop an assay method for the measurement of asbestos to assist in the establishment of an ambient air standard based on human health risks from chronic exposure to asbestos. Ms. Wolfe said currently there are no ambient air quality standards in any federal or state law. Particulate matter is monitored but it doesn't separate out asbestos fibers as a particulate category. DEQ is to establish a task force to

develop a credible scientific method of measuring the airborne asbestos in order to develop an ambient standard, if that is practicable. The standard is to be based on human health risks from chronic exposure so it would be a health risk based standard. The department is to seek and distribute funding and act as a clearinghouse for research results. The university system is urged to participate, as are the congressional delegations. The department is the only entity with a mandate and is to report annual progress to the Environmental Quality Council. A copy of HJR 25 is Exhibit 12 of the minutes.

Mr. Machler asked how it would be funded. **Mr. Habeck** said part of the language was to look for funding. He said this was originally put forth in a bill by the legislator from Libby in an attempt to set up a state standard for asbestos. Because an assay is first needed to keep it science-based, he changed the bill to a joint resolution to take a first step in contributing to the body of knowledge. This resolution has come to the department with an official letter that says please consider HJR 25. Mr. Habeck said they would keep the council apprised and both HJRs will be routine discussion items at the APCAC meetings.

SB 398. Charles Homer.

This bill provides for operation of temporary power generation units under the air quality permitting laws with a retroactive applicability date and a termination date. Mr. Homer said this started out as a bill to allow installation and construction of small temporary electric generation facilities fewer than 10 megawatts. It ended up doing this and also allowing construction of temporary generators up to 125 megawatts, which can occur, prior to obtaining a permit. There is a requirement that no ambient air standards can be violated in starting prior to receiving their permit. The bill has a retroactive applicability date back to January 1 and terminates July 1, 2005. Mr. Homer said there are several facilities across the state that are responding to the energy situation in terms of fitting in small, 10-megawatt plants. There is a proposal to run diesel locomotives to generate electricity in various places throughout the state, which would be of the larger size. Mr. Homer said to his knowledge all of the facilities that require permits are getting the permits without using the benefits of SB 398.

Ms. Lorenzen asked about the term “temporary.” **Mr. Homer** said temporary isn’t defined, but would be two years to be consistent. During that time a facility could request a permanent permit. **Ms. Lorenzen** asked if they came in under this legislation and then decide to become permanent is there any protection against action from EPA. **Mr. Homer** said no.

In response to a question about removal of the temporary facilities after the two years, Mr. Homer said the department did not write this bill but were involved in some of the discussions leading up to the bill. Initially these facilities were portrayed as being brought in on the back of a flatbed truck, parked and hauled away when the need is gone or the end of the permit time. He said he couldn’t imagine this with the 125 megawatt facilities. He said the department does have some concerns about the bill.

5. Confirmed next meeting date for July 19, 2001.

Ms. Lorenzen moved and it was seconded the meeting adjourn. Meeting adjourned at 4:25 p.m.